

REMARKS

Claims 1-18 remain pending in the application. The Office action asserts the claims do not meet the requirements of patentability under 35 U.S.C. §103(a) as being unpatentable over Civanlar et al. (EP 0 884 873) in view of Razavi et al. (WO 00/77620). Applicants traverse this contention and request reconsideration.

The applicants responded to the August 12, 2003 Office action (paper no. 9) rejecting the pending claims as being anticipated by Razavi et al. by providing evidence and argument supporting their contention that what has been claimed is a vehicle incorporating an active network wherein a vehicle device forms a portion of the active network. The applicants' response carefully distinguished the claimed active network structure from other data communication structures heretofore used in vehicles. Since Razavi et al. fail to teach or suggest an active network in association with a vehicle, Razavi et al. could not anticipate the claims. The applicants further distinguished the claims from the combination of Razavi et al. in view of Virtual Router Redundancy Protocol (VRRP) because the asserted combination, even if one would be motivated to combine the references, which there was no teaching or suggestion to do, the combination did not teach or suggest a vehicle incorporating an active network wherein a vehicle device is a portion of the active network.

In the instant Office action, it is asserted that the combination of Civanlar et al. and Razavi et al. renders unpatentable the pending claims.

To establish a prima facie case of obviousness, and hence to find claims 1-18 unpatentable under 35 U.S.C. § 103(a), three basic criteria must be met. First, there must be some suggestion or motivation, either in the references themselves or in the knowledge generally available to one of ordinary skill in the art, to modify the reference or to combine reference teachings. Second, there must be a reasonable expectation of success. Finally, the prior art reference (or references when combined) must teach or suggest all of the claim limitations. The teaching or suggestion to make the claimed combination and the reasonable expectation of success must both be found in the prior art, and not be based upon applicant's disclosure. MPEP at § 2142.

The mere fact that references can be modified is not sufficient to establish prima facie case of obviousness. *See* Section 2143.01 of the M.P.E.P., which states: “The mere fact that references can be combined or modified does not render the resultant combination obvious unless the prior art also suggests the desirability of the combination. *In re Mills*, 916 F.2d 680, 16 USPQ2d 1430 (Fed. Cir. 1990).” The suggestion to combine references must be from the prior art, not the Applicants’ disclosure. *See* Section 2143 of the M.P.E.P. (emphasis added), which states: “The teaching or suggestion to make the claimed combination and the reasonable expectation of success must both be found in the prior art, not in Applicants’ disclosure. *In re Vaeck*, 947 F.2d 488, 20 USPQ2d 1438 (Fed. Cir. 1991).”

The proffered combination of Civanlar et al in view of Razavi et al. fails to meet at least two to the criteria for establishing a prima facie case of obviousness.

There is no suggestion or motivation in the reference to combine them to achieve the applicants’ claimed invention. Faced with the applicants’ argument that the references previously cited against the claims failed to teach an active network within a vehicle, the examiner searched and found a reference purported to teach an active network. Whether it does or not, the applicants do not argue the characterization of the Civanlar et al. reference but reserve the right to do so if such becomes necessary, does not matter because there simply is no suggestion or motivation in either Civanlar et al. or Razavi et al. to combine the references. In making such a rejection, it is the examiner that has the duty of supplying the requisite factual basis and may not, because of doubts that the invention is patentable, resort to speculation, unfounded assumptions or hindsight reconstruction to supply deficiencies in the factual basis. *See In re Warner*, 379 F.2d 1011, 1017, 154 USPQ 173, 177-78 (CCPA 1967); MPEP 2142.

The examiner has put forward no factual basis for concluding that one of ordinary skill in the art would be motivated to combine Civanlar et al. with Razavi et al. to achieve the claimed invention. As such, the examiner has failed to establish a prima facie case of obviousness, and claims 1-18 are allowable.

The combination of Civanlar et al. and Razavi et al. also fails to establish a prima facie case of obviousness because the proffered combination fails to teach or suggest each and every limitation of the claims. The claims set out, among other things, that a vehicle device forms a portion the active network. As established by the applicants in their response to the August 12, 2003 Office action, an active network is a network in which nodes perform custom operations on the messages that pass through the nodes. See Reinold Declaration, paragraph 8 attached therewith. Thus, for a device to form part of the active network, the device must allow messages to pass through while at the same time be capable of performing custom operations on the messages as they pass through. Civanlar et al. fails to teach or suggest any such structure or functionality.

The examiner asserts that the device 90 forms a portion of the active network. However, it is clear the device 90 of Civanlar et al. is not part of the described packet network. First, the applicants do not address whether the network structure taught by Civanlar et al. is an active network in the context of the instant claims because such is unnecessary. It is clear the packet network that is taught by Civanlar et al. consists of IP relay routers 110-115 forming the "edge" of the network and IP relay switches 120-123 forming the "core" of the network to provide connectivity of local area networks (LANs) 100-105. The device 90 is not only outside the "network" defined by Civanlar et al. as the core and edge components, it connected through the LAN 100. In fact, the device 90 is characterized as a source host device, such as personal computer, that sends IP packets via the LAN 100. There is no teaching or suggestion that IP packets are routed through the device 90 or that the device 90 can perform custom operations on the IP packets, both of which are required for the device 90 to be considered a part of an active network.

Thus, for at least a second reason the combination of Civanlar and Rozavi et al. fails to establish a prima facie case of obviousness because the combination fails to teach each and every limitation of the claims.

For at least these reasons the applicants submit claims 1-18 are allowable, and such action is respectfully requested.

If there are any additional fees or refunds required, the Commissioner is directed to charge or debit Deposit Account No. 13-2855.

Dated: May 13, 2004

Respectfully submitted,

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